

Appl. No. 09/784,693  
Reply to Office Action dated Sep. 27, 2004  
Response dated December 27, 2004

### **REMARKS**

This is in response to the Office Action dated March 18, 2003. There are presently 12 claims pending in the case and all claims stand rejected. Applicant is submitting this response to the non-final action in order to place the case in condition for allowance.

In the office action, the Examiner rejected claims 1 - 12 under 35 U.S.C. 102(b) as being anticipated by a patent to Marble ('968 patent). Applicant acknowledges rejection of the Examiner and respectfully traverses.

In the body of the office action, the Examiner takes the position at this time that the '968 Marble patent "...discloses a plurality of ridges (not labeled, outer underside edges of the cap portion) positioned on an underside of the cap portion." (Page 2, lines 20-22- Office Action). Before addressing the merits of this statement by the Examiner, applicant would like to note that throughout this prosecution, applicant has reviewed the specification and drawings of the '968 patent, and continues to fail to see ridges across the lower surface of the cap disclosed and claimed in the '968 patent. Turning now to merits of the Examiner's stated quoted above, applicant makes reference to the office action dated March 18, 2003, where on page 2 of that office action, lines 21-22, the Examiner states: "Marble does not teach the ridges positioned on the underside of the cap portion." This is a statement which is clearly diametrically opposed to the statement in the current office action. The question becomes, Was the Examiner correct in March, 2003 or is he correct now? It appears that the Examiner is finding structure in Marble that is clearly not there. This is supported by the fact that Marble makes to reference to ridges on the bottom of the cap portion; an important feature in the present invention.

Turning to other parts of the '968 patent which clarifies how the device works, it is clear that Marble places ridges on the anchor leg of the cap (Lines 24 through 34). Marble further states that this portion of the cap "the shape of the enlarged free end portion of the guard facilitates penetration of the guard into the bonding material as will be apparant upon inspectioin of Figure 2. This was Marble's only means of holding the guard in position. To reiterate, and noted by the Examiner himself, Marble does not mention (nor do the drawings show) ridges on the underside of the cap.

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Next, the Marble device is utilized with "bonding material." The present device is used with "fluidized sealant material," which is very much different than today's modern caulks and sealants.

In the office action, the Examiner notes that the underside of the cap of Marble in Figure 4 makes contact with the sealing material. However, a review of Figure 4, the only contact with the "bonding material" is by the member 17 penetrating into the material.

Finally, in Marble, as shown in Figure 2, there is no contact between the underside of the cap and the bonding material. The only contact by the underside is with the two adjoining coping units 5 and 6. Therefore, applicant has amended the independent claims to reflect that unlike Marble, the ridges on the underside of the present invention make contact along the entire surface of the underside, and not just a portion as shown in Marble. This is an important feature, since this contact along the entire underside surface provides a far strong adherence of the cap to the sealant material.

As we have stated earlier in this prosecution, the Marble patent teaches the use of bonding material between adjacent building blocks which are subject to expansion and erosion. However, Marble failed to address the movement of the entire joint on a different plane. The use of plastic or other types did not allow adherence to the surface until modern sealants were developed. The use of the ridges as claimed in applicant's invention, allows the cap to become an integral part of the joint, and not merely rest on top of the joint. This allows for not only expansion and contraction, but also movement of the entire joint in a different plane. Without the ridges, the caps pulled away from the stone. The Marble patent prevented water intrusion caused by expansion and contraction of the bonding material. The fact that the present invention teaches elasticity, rather than a plastic member, allows it to integrally adhere to the joint and expand and contract with the joint.

Applicant is submitting a declaration by himself, a man skilled in masonry art, which discusses the product he had utilized which was configured according to Marble, and the problems he personally confronted with that product. He then explains how he solved those problems with the present invention.

Applicant would assert that the claims are patentable over the art cited, and would request re-examination of the claims and a notice of allowance.

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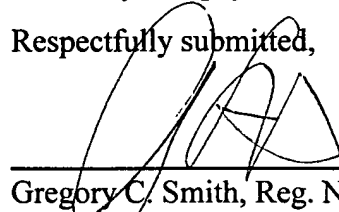
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Should the Examiner feel that a telephone conference would advance the prosecution of this application, he is encouraged to contact the undersigned at the telephone number listed below.

Applicant respectfully petitions the Commissioner for any extension of time necessary to render this response timely.

Please charge any fees due or credit any overpayment to Deposit Account No. 50-0694.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on the 27<sup>th</sup> day of December, 2004.



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SM Nehrbass